

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-____-E

IN RE:

Application of Duke Energy Progress,
LLC for Approval of the Transfer and Sale
of Property in Asheville, North Carolina

APPLICATION FOR
APPROVAL OF TRANSFER
AND SALE OF PROPERTY

Duke Energy Progress, LLC (“DEP”), hereby applies to the Public Service Commission of South Carolina (the “Commission”) for approval of the transfer and sale of certain real estate, known as the Asheville, North Carolina property (the “Property”) that is currently included in the rate base of DEP. The Property is located in the DEP service territory in North Carolina. This Application is made pursuant to S.C. Code Ann. § 58-27-1300 (2015), 10 S.C. Regs. 103-830, and other applicable rules and regulations of the Commission. In support of this Application, DEP would show the following:

1. The name and address of the Applicant is

Duke Energy Progress, LLC
550 South Tryon Street
Charlotte, North Carolina 28202

2. The name and address of the Applicant’s attorneys are:

Heather Shirley Smith, Deputy General Counsel
Rebecca J. Dulin, Associate General Counsel
Duke Energy Corporation
40 West Broad St., Suite 690
Greenville, South Carolina 29601
Telephone: (864) 370-5045
heather.smith@duke-energy.com
rebecca.dulin@duke-energy.com

and

Frank R. Ellerbe, III (S.C. Bar No. 01866)
 Samuel J. Wellborn (S.C. Bar No. 101979)
 ROBINSON GRAY STEPP & LAFFITTE, LLC
 Post Office Box 11449
 Columbia, South Carolina 29211
 Telephone: (803) 227-1112
fellerbe@robinsongray.com
swellborn@robinsongray.com

3. Copies of all pleadings, orders or correspondence in this proceeding should be served upon the attorneys listed above.

4. DEP is a public utility engaged in the generation, transmission, distribution, and sale of electric energy in South Carolina and is subject to the jurisdiction of this Commission.

5. The Property consists of certain real estate that is not required for DEP's current utility operations. The property is two adjoining parcels of land comprising 5.48 acres.

6. The Property is being sold to the City of Asheville, North Carolina (the "City"). This transaction will not affect DEP's ability to provide reliable service to its customers at just and reasonable rates.

7. The Property was acquired by DEP in 2014. The Property was originally purchased to build a substation, but it was later decided that another location would be a more appropriate location for the substation and the Property became surplus.

8. The Property is located adjacent to property owned by the Asheville Housing Authority that is comprised of a public housing development known as "Lee Walker Heights." For the past few years, the Asheville Housing Authority has been in the process of redeveloping Lee Walker Heights, and the City believed that the redevelopment project would be more successful if it could acquire the Property that is the subject of this application in order to assure its development as a mixed-use and mixed-income project that would connect to and compliment

the Lee Walker Heights redevelopment. For these reasons, on October 11, 2017, DEP entered into an agreement with the City of Asheville that would give the City the option to purchase the Property, and the City exercised that option on July 22, 2019.

9. The Property was bought by DEP in 2014 for \$5,300,000, and the Property was appraised for \$5,250,000 in January 2014. Pursuant to the Option Agreement, the Property is being sold to the City for \$5,300,000.¹ The net book value of the property is \$5,313,940. The original cost of the Property being sold will be credited as a reduction of the amount carried upon the books of the Company under Account 101, "Electric Plant in Service."

10. The South Carolina Office of Regulatory Staff has been served with a copy of this application and exhibits. S.C. Code Ann. § 58-27-1300 provides that an electric utility must first obtain Commission approval prior to selling or otherwise transferring utility property with a fair market value greater than \$1 million. Therefore, DEP applies to the Commission for permission to sell the Property.

11. Applicant requests that this Commission: (i) approve this matter at the next appropriate weekly agenda session; (ii) issue an appropriate order approving the relief sought in the DEP's Application; and (iii) grant such other and further relief as this Commission may deem just and proper. The Option Agreement requires that the transaction close on or before November 19, 2019. For that reason, DEP respectfully requests Commission action in advance of that date.

WHEREFORE, Applicant prays that, pursuant to S.C. Code § 58-27-1300 and other applicable rules and regulations, the Commission enter an order approving the transfer and sale of the Property.

¹ The Memorandum of Agreement, Option Agreement, and Option Agreement Amendment are being filed herewith as Exhibit A. The Appraisal Summary is being filed herewith as Exhibit B.

Dated this 29th day of October, 2019.

Heather Shirley Smith, Deputy General Counsel
Rebecca J. Dulin, Associate General Counsel
Duke Energy Corporation
40 West Broad St., Suite 690
Greenville, South Carolina 29601
Telephone: (864) 370-5045
heather.smith@duke-energy.com
rebecca.dulin@duke-energy.com

and

s/Samuel J. Wellborn

Frank R. Ellerbe, III (S.C. Bar No. 01866)
Samuel J. Wellborn (S.C. Bar No. 101979)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
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fellerbe@robinsongray.com
swellborn@robinsongray.com

Attorneys for Duke Energy Progress, LLC



Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING (hereafter the "**MOU**") is made and entered into the 10th day of August, 2016, by and between the **City of Asheville**, a North Carolina municipal corporation, (hereafter the "**City**") and Duke Energy Progress, LLC a North Carolina limited liability company (hereafter the "Duke Energy"), referred to collectively as the "Parties".

WITNESSETH:

WHEREAS, Duke Energy owns 1.35 acre and 4.13 acre parcels of land located at 319 Biltmore Avenue in Asheville, NC with PIN #'s 9648-46-1623 and 9648-46-0423 respectively as shown on **Exhibit A**, attached hereto and incorporated herein (herein "Biltmore Avenue Property" or "Property"); and

WHEREAS, the aforementioned Property is located adjacent to property owned by the Asheville Housing Authority (hereafter the "Housing Authority") with a housing development known as "Lee Walker Heights" and the Housing Authority, in partnership with Mountain Housing Opportunities, Inc. (hereafter "MHO") is currently in the process of submitting an application for low income housing tax credits to the North Carolina Housing Finance Agency for the redevelopment of Lee Walker Heights and is also seeking funding support from the City for this major redevelopment project (hereafter "Lee Walker Heights Redevelopment"); and

WHEREAS, the City believes that the Lee Walker Heights Redevelopment project could be a more broadly transformational project if the City were able to acquire the adjacent Biltmore Avenue Property from Duke Energy in order to assure its development for use as a mixed-use (i.e. commercial and residential) and mixed-income project (affordable and market rate housing) that would connect to and compliment the Lee Walker Heights Redevelopment and provide a secondary access point for that project to Biltmore Avenue; and

WHEREAS, the Housing Authority and MHO also believe that the Biltmore Avenue Property presents a transformative development opportunity and to that end, have at the request of the City, developed a preliminary design concept for both the Lee Walker Heights Redevelopment property and the Biltmore Avenue Property which demonstrates the benefit of interconnectivity between these two sites as shown on **Exhibit B**, attached hereto and incorporated herein; and

WHEREAS, the City and Duke Energy have a strong history of working together in partnership and the City has been in communication with Duke Energy about the possibility of acquiring the Biltmore Avenue Property and Duke Energy has indicated a willingness to sell the Property to the City upon certain terms and conditions; and

WHEREAS, pursuant to N.C. G. S. 160A-16, the City is authorized to enter into contracts and pursuant to N.C.G.S 160A-240.1 is authorized to acquire property generally; and

WHEREAS, the Asheville City Council at its regularly scheduled meeting held on April 26, 2016 adopted Resolution No. 16-97, granting approval to enter into this MOU and authorizing the City Manager to execute any and all documents required to give effect to the terms and conditions herein;

NOW, THEREFORE, in consideration of the mutual covenants, representations and warranties set forth in this MOU and made a part hereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Option to Purchase. Duke Energy agrees to grant an Option to Purchase the Biltmore Avenue Property to the City with the following main terms ("Option Agreement"):
 - Purchase Price for the Property: \$5.3 Million
 - Additional Consideration: The City will provide all necessary easements and right-of-ways on and across City-owned property to Duke Energy, for Duke Energy's electrical infrastructure (lines and facilities) planned to be completed in the next 8 years located in the City of Asheville corporate limits. The exact location of said easements will be mutually determined by the Parties, and said easements shall be in Duke Energy's then standard easement form or such other form as agreed to by the parties. To the extent possible, the City will also assist Duke Energy with the acquisition of additional easements and right-of-ways needed for the electrical infrastructure.
 - Option Period for the City of Asheville to purchase the Property: 8 years. The City's ability to exercise the Option will be contingent on Duke being reasonably satisfied with the City of Asheville's regulations governing substation location in effect at the time the City, or assignee, desires to execute the Option.
 - Right to Assign: The Option would be assignable.
2. Access Easement. Upon execution of the Option Agreement, Duke Energy also agrees to grant to the City a non-exclusive, permanent access easement across the Biltmore Avenue Property for purposes of allowing ingress and egress from adjacent Lee Walker Heights property to Biltmore Avenue. The exact location of the easement will be mutually determined by the parties but will be of sufficient width to accommodate the building of a public street to include bike, pedestrian and transit facilities. Additionally, Duke Energy will grant an easement for temporary grading on the site that is mutually determined by the parties.
3. Zoning Approval. Upon execution of the Option Agreement, Duke Energy, working in coordination with the City, agrees to submit a rezoning application for the Property to be rezoned from its current zoning of Highway Business (HB) to Urban Place Conditional Zoning (UP-CZ). The Conditional Zoning would be granted if it is consistent with the Site Plan (attached hereto as **Exhibit B**) and subject to conditions mutually agreed upon by Duke Energy and the City regarding the contemplated use of the Property as mixed-use (i.e. mixed income residential and commercial/retail). Ideally, this application would be submitted simultaneously, or as near as possible, with the rezoning application that the Housing Authority and MHO, plan to submit for the rezoning of the Lee Walker Heights property to be rezoned from Residential High Density Multi-Family (RM-16) to Urban

Place Conditional Zoning (UP-CZ). Planned submission of application for rezoning of Lee Walker Heights is April 2016.

4. Governing Law. This MOU Agreement is governed by and shall be construed according to the laws of the State of North Carolina. Venue for any disputes arising hereunder shall be Buncombe County, North Carolina.
5. Severability. Should any provision or provisions contained in this MOU Agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.
6. Entire Agreement. This MOU Agreement, and attached Exhibits, sets for the final entire Agreement between the Parties hereto and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. No amendment or modification of this Agreement will be effective unless in writing and signed by all Parties to this Agreement.
7. Notices. All notices required or allowed to be given pursuant to this Agreement shall be in writing, and either (i) delivered in person to the party, or (ii) delivered by U.S. mail or private courier, postage pre-paid to the following addresses:

If to **Duke Energy:**

555 Brevard Road

Asheville, NC 28803

Attn: Jason Walls, Local Government & Community Relations Manager

828.258.5019

If to **City:**

City of Asheville, PO Box 7148

Asheville, NC 28802

Attn: Cathy Ball, Assistant City Manager

828.259.5939

8. Authority. The City and Duke Energy each hereby certify that (i) it has full power and authority to enter into this MOU and to enter into and carry out the transactions contemplated by this MOU; and (ii) by proper action it has duly authorized the execution and delivery of this MOU.

IN WITNESS WHEREOF, each Party has caused this MOU to be duly executed by their authorized representatives on the day and year first above written

Attest to:

CITY OF ASHEVILLE

Magdalen Burleson
Maggie Burleson
City Clerk

By: [Signature]
Gary Jackson
City Manager

(Official Seal)

Attest to:

DUKE ENERGY PROGRESS, LLC

Title: _____
(Corporate Seal)

By: Otto W. Allen
Title: Mgr. Real Estate Transactions

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

I, Notary Public of the County and State aforesaid, certify that ^{sub Magdalen} Maggie Burleson, personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

Witness my hand and notarial seal this 6th day of January 2017.

Notary Public [Signature]
Printed Name: Sarah Terwilliger

My Commission Expires: 11/14/18

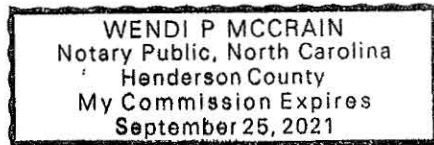
SARAH TERWILLIGER
NOTARY PUBLIC
Buncombe County
North Carolina
My Commission Expires Nov. 14, 2018

STATE OF NC
COUNTY OF Henderson

I, Wendy P. McClain, Notary Public of the aforesaid County and State, certify that Otto W. Allen personally came before me this day and acknowledged that he/she is Mgr. Real Estate Transactions of Duke Energy Progress,

LLC and that he/she, as Mgr. Real Estate Transactions, being authorized to do so, executed the foregoing on behalf of the said limited liability company.

Witness my hand and notarial seal this 14th day of December ~~August~~, 2016.

**Notary Public**

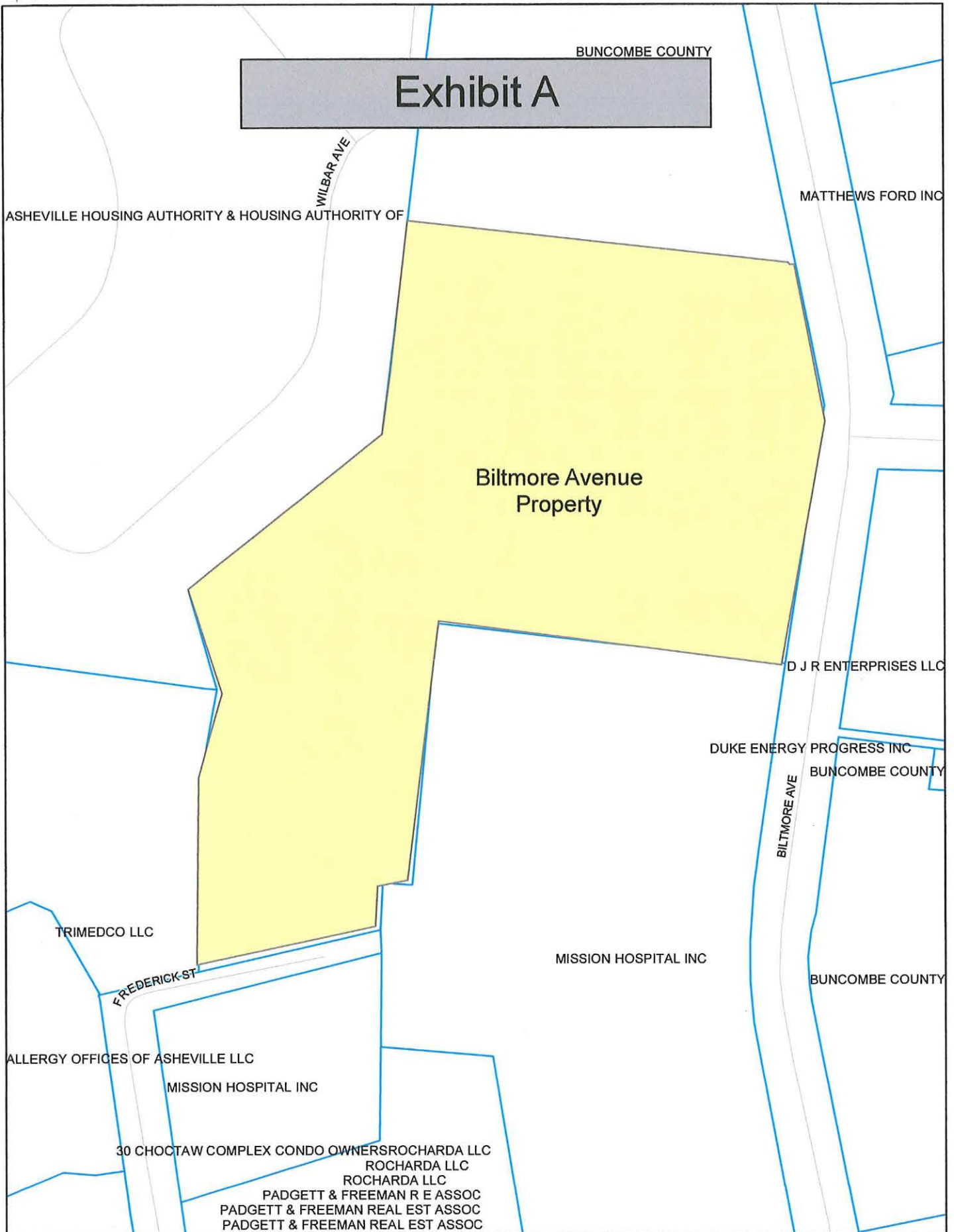
Printed Name: Wendi McCrain

My Commission Expires: 9/25/2021



Site Plan

The site plan creates an integrated network of streets, buildings, and open spaces. Small block sizes, connections to surrounding streets, and a variety of building types with porches and active ground floors make a comfortable and inviting place for pedestrians.



Site No. 114245
Land Unit No. 1321547
Project No. 114245-459250

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

**OPTION TO PURCHASE
REAL PROPERTY
AGREEMENT**

THIS OPTION TO PURCHASE REAL PROPERTY AGREEMENT (herein "Option" or "Agreement") is made and entered into this 11th day of October, 2017, by and between the City of Asheville, a North Carolina Municipal Corporation (herein "City") and Duke Energy Progress, LLC, a North Carolina limited liability company (herein "DEP"). City and DEP are collectively referred to herein as the "Parties."

WHEREAS, pursuant to Resolution No. 16-97, dated April 26, 2016, the City Council of the City of Asheville authorized the City Manager to enter into a Memorandum of Understanding with DEP related to the purchase of the Property described herein and;

WHEREAS, the City and DEP executed the aforementioned Memorandum of Understanding which outlines the major agreed upon terms and conditions of this Option, on January 6, 2017.

W I T N E S S E T H

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

A. TERMS AND CONDITIONS

1. DEP, being the owner thereof, agrees to grant to the City, subject to the terms and conditions stated herein, the exclusive right or option to purchase at any time within eight (8) years from the date of full execution hereof by the parties hereto, two parcels of real property, containing 1.35 +/- acres and 4.13 +/- acres respectively, located at 319 Biltmore Avenue, in the City of Asheville, County of Buncombe, State of North Carolina, as recorded in Deed Book 5236 at Page 640 and more particularly described as PIN Number 9648-46-1623 and PIN Number 9648-46-0423 on the Buncombe County Tax Maps (herein "Property"), and shown as Parcel A and Parcel B on a plat map prepared by Alliance Land Surveying for Duke Energy on February 5, 2014 and recorded in PB 173 P 154 in the Buncombe County Register of Deeds, attached hereto and incorporated herein as Exhibit A.

2. DEP understands and agrees that by executing this Option, DEP commits to conveyance of the Property, as referenced in Paragraph A.1. above, subject to the terms and conditions herein, and that a failure to do so entitles the City to seek specific performance of this Option in the appropriate judicial forum. Notwithstanding the foregoing, it is agreed by both Parties that the City's ability to exercise the Option will be contingent on DEP being reasonably satisfied with the City's regulations governing substation location in effect at the time the City, or its assignee, desires to exercise the Option. If DEP is not reasonably satisfied with such regulations, DEP may terminate the Option and City shall retain the Option Money.
3. In the event the Option herein granted is exercised by the City, then the sale and purchase of the Property shall be completed upon the terms and conditions set forth herein, which shall constitute the Contract of Sale and Purchase for the Property.

B. PAYMENT

1. The total amount for the Option to purchase shall be Fifty Three Thousand Dollars & no/100 (\$53,000.00) (herein "Option Money"), which amount shall be paid to DEP at the time the City executes this Option in accordance with wiring instructions to be provided by DEP.
2. In the event the Option herein granted is exercised by the City, the total purchase price for the Property shall be Five Million Three Hundred Thousand & no/100 (\$5,300,000.00) (herein "Purchase Price"). The Option Money shall be applied to the Purchase Price. The payment of the remainder of the Purchase Price shall be made upon transfer of title to City at closing. If DEP is unable to produce good and marketable title, free and clear of all liens and encumbrances at the time of closing (except for the Permitted Exceptions described herein), then DEP shall return the Option Money to the City.
3. As additional consideration for the purchase of the Property, the City agrees to provide all necessary easements and right of ways on and across City-owned property to DEP, for DEP's electrical infrastructure (lines and facilities) planned to be completed within the next eight (8) years located within the City of Asheville Corporate limits. The exact location of said easements will be mutually determined by the Parties and said easements shall be in DEP's then standard easement form or such other form as agreed to by the Parties.
4. In the event the Option herein granted is exercised by the City, the City shall pay for the preparation of the deed, for all expenses of the

examination of title and recordation of the deed. DEP shall pay off any liens, deeds of trusts, judgments, or title issues on or affecting the Property (except for the DEP Deed of Trust described herein) , and shall pay any expenses associated with the clearing of those items. DEP shall also pay for the North Carolina Revenue Stamp (i.e. documentary stamp tax).

C. TERMINATION

1. Except as provided in Section A 2 and Section F herein, this Option shall be irrevocable for a period of eight (8) years from the date of execution of this Agreement and shall automatically terminate at the end of the eight-year period.
2. During the eight (8) year irrevocability period, the City shall determine whether to exercise this Option and shall give DEP written notice of intent to do so prior to the expiration of the irrevocability period at the address specified below. If the City does not exercise the Option within the irrevocability period, the Option Money shall be nonrefundable and shall be retained by DEP.
3. Once the City exercises the Option, closing shall occur no later than 120 days from the date of the written notice of the City's intent to exercise this Option; provided however, the closing may be extended, upon mutual agreement of the Parties, for purposes of obtaining Commission approval of the sale and purchase of the Property as described in Section J herein.

D. RESPONSIBILITIES

1. DEP shall not sell, mortgage, encumber, or otherwise dispose of such Property or any part thereof prior to the expiration date of the eight (8) year irrevocability period, except to the City or its assigns.

Notwithstanding the foregoing, the City acknowledges that the Property is currently subject to the following agreements:

(a) Temporary License Agreement between DEP and Beverly-Grant, Inc., dated April 6, 2017, which permits Beverly-Grant, Inc. to use a portion of the Property (0.51 acre) for the temporary storage of construction materials and equipment and for parking. The Temporary License Agreement will terminate on October 8, 2018 (herein "Initial Term"), but may be extended for an additional period of six months upon request by Beverly-Grant, Inc. and with DEP's consent (herein "Renewal Term"). DEP agrees to terminate the Temporary License Agreement at the end of the Initial Term.

(b) Lease Agreement between DEP and Buncombe County, North Carolina dated August 31, 2015, which permits Buncombe County to use the former "showroom" of the former "Matthews Ford" car dealership and the parking lot located adjacent thereto for storage and distribution of election equipment and supplies. The Lease term is month-to-month unless terminated by DEP or Buncombe County upon 60 days prior written notice to the other party.

DEP has also informed the City that DEP intends to enter into a license agreement with American Lighting and Signalization, LLC ("American Lighting") which permits American Lighting to use a portion of the Property for temporary storage of construction materials and for parking. The Temporary License Agreement with American Lighting may not have been entered into as of the date of execution of this Option. If executed, the Temporary License Agreement will terminate on March 31, 2018. City acknowledges and consents to the Temporary Lighting Agreement with American Lighting.

2. **Rezoning:** Upon execution of this Option, DEP working in coordination with the City, agrees to submit a rezoning application for the Property to be rezoned from its current zoning of Highway Business (HB) to Urban Place Conditional Zoning (UP-CZ) or some other similar, mutually agreed upon zoning. City shall be responsible for preparation of the rezoning application at City's sole expense. Additionally, DEP has executed an owner's affidavit to allow the Housing Authority of the City of Asheville ("AHA") to reference the Road Easement noted below in Paragraph 3, as part of its zoning application for the redevelopment of Lee Walker Heights. DEP hereby agrees to continue to cooperate with AHA and provide the necessary DEP approvals for this zoning process.
3. **Easement:** DEP agrees to grant to the City, simultaneously with the execution of this Option, a non-exclusive, permanent easement, 50 feet in width, for purposes of building a road and appurtenant improvements, including but not limited to sidewalks and utilities, across the Property allowing ingress and egress from the adjacent Lee Walker Heights property owned by the Asheville Housing Authority, to Biltmore Avenue (herein "Roadway Easement"). DEP understands and agrees that it is intended that this road shall be accessible to the public and shall be transferred in the future to the City in fee simple as a deduced public Right of Way if City exercises this Option. A draft copy of the Road Easement and plat of its proposed location is attached hereto and incorporated herein as **Exhibit B**.
4. **Due Diligence:** During the irrevocability period, the City, its agents or assigns, may without further request or permission of DEP, perform all due diligence investigations as it sees fit to determine the suitability of the

Property; provided, however, City shall not be entitled to conduct any environmental investigations on the Property beyond a Phase I environmental site assessment (i.e., no sampling, drilling, etc.) without the prior written consent of DEP. The City will have the right to enter upon the Property at reasonable times, provided such entry does not interfere with the activities of any licensee of DEP (as referenced in Section D, for conducting such due diligence activities as surveying, appraising, conducting environmental inspections and assessments, and other reasonable purposes related to this transaction. The City will exercise due care in conducting its activities on the Property, will repair any damage to the Property caused by the City's acts or omissions on the Property in conducting its due diligence activities and will require any contractors or agents of the City to likewise use due care and make necessary repairs, and to indemnify, defend and hold Owner harmless from and against any and all costs, liabilities and claims, arising from the negligent acts or omissions of the City, its agents, contractors, or assigns in exercising this right of entry and inspection.

5. **Demolition:** Provided DEP has approved City's demolition plan, DEP hereby agrees to allow City, its agents and assigns to demolish and remove all buildings and associated improvements currently located on the Property. Such demolition shall be at the sole cost of the City, its agents or assigns. City agrees to give at least 90 days advance notice to DEP and provide its demolition plan prior to beginning such demolition activities. City agrees to indemnify, defend and hold DEP harmless from and against any and all costs, liabilities and claims, arising from the negligent acts or omissions of the City, its agents, contractors, or assigns in exercising this right of demolition.
6. **Earthmoving and Improvements:** In addition to road improvements to be constructed within the Roadway Easement, Owner further agrees to allow the removal and reconstruction of retaining walls and permanent placement of construction fill from the adjacent Lee Walker Heights property, as necessary to establish a continuous accessible grade from Biltmore Avenue to Lee Walker Heights and the addition of future building pads on the Property and to bring the Property to developable grade levels as shown on the earthmoving plan attached hereto and incorporated herein as Exhibit C. This work will be at the sole expense of the City or its assigns, and the City agrees to indemnify, defend and hold Owner harmless from and against any and all costs, liabilities and claims arising from the negligent acts or omissions of the City, its agents, contractors, or assigns in exercising these activities.

7. The terms and conditions of Section D, numbers 2-7 above shall be effective upon execution of this Option and are not contingent upon the City or any other entity exercising the Option.

E. NOTICE

1. All written notices required under this Agreement shall be served upon the parties in writing and shall be deemed properly served by hand delivery or when deposited in the United States mail, registered or certified mail, postage pre-paid, return receipt requested addressed to the party to whom directed at the following addresses:

As to City:

City of Asheville
P.O. Box 7148
Asheville, NC 28802
Attn: Real Estate Manager

As to DEP:

Duke Energy Progress, LLC
550 S. Tryon St., DEC22A
Charlotte, NC 28202
Attn: Keith McGuinness

Any party may, from time to time, by notice as herein provided, designate a different address or authorized person to which notice shall be sent.

F. CONDITIONS OF CLOSING

Following the exercise of this Option by the City, the obligation of the City to close on the Property is subject to fulfillment of the following conditions:

1. All of the representations and warranties of DEP expressed herein shall be true and correct in all material respects at the closing date as if then made.
2. If the City chooses to exercise this Option, the City shall specify the place and time of closing, which shall not be more than 60 days after the date of the written notice of the City's intent to exercise this Option.
3. At closing, and simultaneously upon payment of the Purchase Price as provided above, DEP shall execute and deliver to the City a Special Warranty Deed conveying to the City fee-simple marketable title to the Property, together with all improvements, hereditaments, and appurtenances thereunto belonging, together with all of DEP's right, title and interest in and to any streets or alleys adjoining or abutting thereon provided however, the Special Warranty Deed shall contain the following (herein "Permitted Exceptions"):
 - (a) Public streets and roads, visual easements, restrictions, and recorded rights of way.
 - (b) All matters of survey and recorded plats (including matters that would be revealed by a current, accurate physical survey of the Property).

- (c) All easements, restrictions, rights of way and all other matters of record and all matters that would be revealed by a physical inspection of the Property.
 - (d) The lien of the First Mortgage dated May 1, 1940, to The Bank of New York Mellon Trust Company, N.A., as Successor Trustee to Morgan Guaranty Trust Company of New York, recorded on June 5, 1940 in Book 370 at Page 001 in the Buncombe County Register of Deeds, as supplemented ("DEP Deed of Trust"). DEP agrees to use commercially reasonable efforts to obtain a release of the Property from said lien after the closing.
4. DEP shall remain responsible for payment of all taxes and assessments for the Property for all years prior to closing. All due and payable City and County ad valorem taxes for the Property for the year in which the closing occurs shall be prorated to the date of closing and shall be paid by DEP.
 5. Possession of the Property shall be delivered to the City at the date of closing or upon such subsequent date as may be mutually agreed upon between the parties hereto.
 6. The Property must be in substantially the same or better condition at closing as of the date of this Option, reasonable wear and tear and demolition and construction activities conducted by City or its assigns as referenced in Section D of this Agreement, excepted.

IF CITY EXERCISES THIS OPTION, CITY SHALL BE DEEMED TO BE SATISFIED WITH ALL ASPECTS OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL CONDITION) AND SHALL ACCEPT THE PROPERTY AT CLOSING "AS IS" AND WITH ALL FAULTS.

7. Loss or damage to the property by fire or casualty shall be at the risk of DEP until title has been conveyed to the City unless such damage or destruction is caused by or attributable to City (or any of the City's employees', agents' or contractors') acts or omissions, in which event City shall bear the risk of loss.

Following the exercise of this Option by the City, the obligation of DEP to close on the Property is subject to fulfillment of the following condition:

Governmental Approval: DEP's obligation to convey the Property to the City may be contingent upon DEP's obtaining approval of the Public Service Commission of South Carolina ("Commission") pursuant to Section 58-27-1300, South Carolina Code of Laws, 1976, which requires Commission approval of some sales of property by an electric utility. DEP shall make a good faith effort to obtain the approval of the Commission; provided, however, if the sale is not approved by the Commission, DEP shall be entitled to

terminate this Option, and, upon such termination, the Option Money will be refunded to the City, and the parties hereto shall have no further rights and obligations hereunder, except for the survival. In the event DEP is unable to obtain the approval of the Commission for the sale of the Property to the City within ____ () days after the date of the written notice of the City's intent to exercise this Option, then City shall be entitled to terminate this Option by providing written notice to DEP of such termination; provided, however, if DEP obtains the approval of the Commission prior to the City's exercise of the termination option provided in this grammatical sentence, then such termination option shall be null and void and of no further force and effect.

G. BINDING EFFECT

1. This Option becomes effective when signed by DEP and then shall be binding upon DEP, its successors, and assigns.

H. ASSIGNMENT

1. This Option is assignable by the City with the prior written consent of DEP. In the event of such assignment, the assignee shall have all of the rights, powers, privileges and obligations held by the City pursuant to this Option.

I. ENTIRETY

1. This Agreement along with the exhibits referenced herein, contains the entire understanding of the Parties and may not be modified, except by an instrument in writing and signed by both Parties.

J. GOVERNING LAW

1. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

K. SURVIVAL OF OPTION

1. All the terms, conditions, representations and agreements contained herein shall survive the closing and the delivery of the deed and other documents for such period of times as shall be necessary for the full performance of this Option.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized official as of the day and year first above written.

Attest to:

CITY OF ASHEVILLE

Magdalen Bureson By: Cathy D. Ball
City Clerk Assistant City Manager
(official seal)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Sarah Terwilliger, Notary Public of the County and State aforesaid certify that Magdalen Bureson, personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

WITNESS my hand and notarial seal this 11th day of October, 2017.



Sarah Terwilliger
Notary Public
My Commission Expires: 11/14/18

This document has been pre-audited in the manner required by the Local Government Budget and Fiscal control Act.

Bl M Wital
Chief Financial Officer

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

DUKE ENERGY PROGRESS, LLC

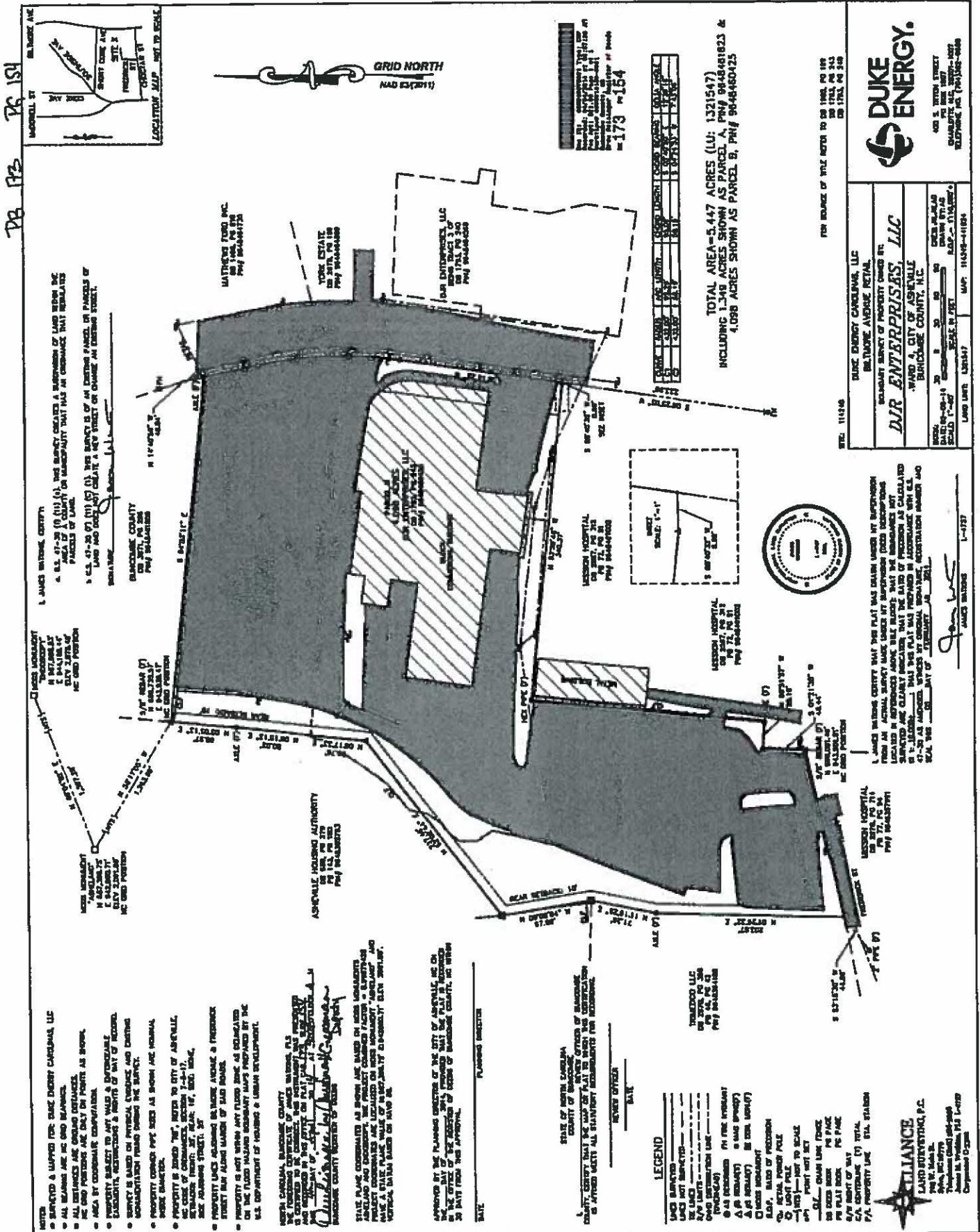
By: [Signature]Name: LLOYD W. YATESTitle: EVP, President Carolina

STATE OF NORTH CAROLINA

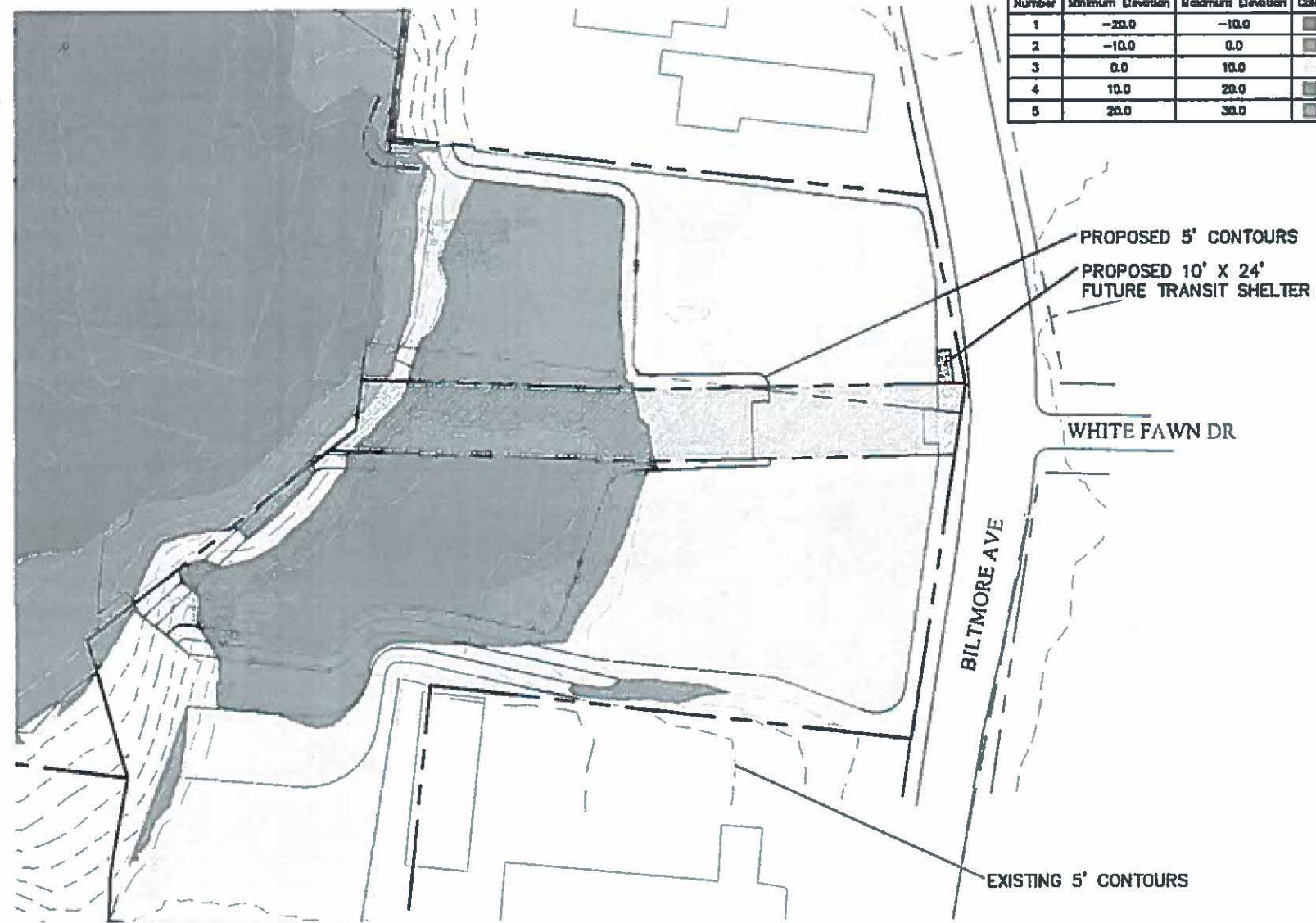
COUNTY OF Mecklenburg

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Lloyd Yates, EVP President CarolinaDate: 10/11/2017Zachary Freeland
Notary PublicMy Commission Expires: 12/29/2018



Elevations Table			
Number	Minimum Elevation	Maximum Elevation	Color
1	-20.0	-10.0	
2	-10.0	0.0	
3	0.0	10.0	
4	10.0	20.0	
5	20.0	30.0	



**LEE WALKER HEIGHTS
CUT/FILL EXHIBIT
JANUARY 2017**

**AMENDMENT TO OPTION AGREEMENT
319 Biltmore Avenue, Asheville, NC**

This Amendment to the Option Agreement (this "Amendment") is made this 18th day of July, 2019 by and between the **CITY OF ASHEVILLE**, a Municipal Corporation, organized and existing under the laws of the State of North Carolina (herein "City") and **DUKE ENERGY PROGRESS**, a North Carolina limited liability company (herein "DEP").

WHEREAS, City and DEP entered into an Option Agreement to Purchase Real Property dated October 11, 2017 for certain property located at 319 Biltmore Avenue, Asheville in Buncombe County, North Carolina (the "Option Agreement"); and

WHEREAS, City and DEP have agreed to this Amendment in order to permit the City, its agents, contractors, licensees or assigns, to conduct additional activities on the Property;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and DEP hereby agree to amend the Option Agreement as follows:

1. Section A. Terms and Conditions, Paragraph 1, of the Option Agreement is hereby amended to correct the second referenced PIN Number by deleting it and replacing it with the following: PIN Number 9648-46-0425.
2. Section D. Responsibilities, Paragraph 3. Easement, of the Option Agreement is hereby amended to add the following: "DEP has agreed to execute an Amendment to the Temporary and Permanent Roadway Easement to clarify the rights of the parties and that the easement is intended to benefit, be appurtenant to, and run with the adjacent Housing Authority Property ("Amendment to Easements"); said Amendment is attached hereto as **Exhibit D**.
3. Section D. Responsibilities, Paragraph 5. Demolition, of the Option Agreement is hereby amended to delete the third sentence of the paragraph "*City agrees to give at least 90 days advance notice to DEP and provide its demolition plan prior to beginning such demolition activities.*" and replace it with the following: "*Such demolition activities shall be in accordance with plans named "Lee Walker Heights Drawing Set - Volume 1" dated "10.08.18 / FOR CONSTRUCTION" and associated technical specifications 10.08.2018, on*

file and available at the City's Development Services Center, 161 S. Charlotte Street, Asheville NC, an excerpt is included in the attached Exhibit E. DEP hereby acknowledges approval of the attached plans and agrees that the City, its assigns or licensees, may proceed with construction activities in accordance with these plans upon execution of this Agreement. Any substantial changes to the Plans/Specifications herein, are subject to the prior review and approval of DEP upon 60 day advance notice."

4. Section D. Responsibilities, Paragraph 6. Earthmoving and Improvements, of the Option Agreement is hereby amended to add the following: *"All earthmoving, grading, road construction, stormwater improvements, utility installation and erosion control activities, shall be in accordance with plans named "Lee Walker Heights Drawing Set - Volume 1" dated "10.08.18 / FOR CONSTRUCTION" and associated technical specifications 10.08.2018, on file and available at the City's Development Services Center, 161 S. Charlotte Street, Asheville NC, an excerpt is included in the attached Exhibit E. DEP hereby acknowledges approval of the attached plans and agrees that the City, its assigns or licensees, may proceed with construction activities in accordance with these plans upon execution of this Agreement. Any substantial changes to the Plans/Specifications herein, are subject to the prior review and approval of DEP and the City upon 60 day advance notice."*
5. Section D. Responsibilities, Paragraph 7. of the Option Agreement is hereby amended by deleting it in its entirety and replacing it with a new Paragraph 7. Environmental Remediation, which shall read as follows: *"The City has obtained site studies including a Phase II Environmental Site Assessment as well as a Geotechnical Report, a summary of which is incorporated herein as Exhibit F. Upon exercise of this Option, the City, its agents, assigns or licensees, may commence any necessary remediation as noted in the Phase II Assessment and any necessary geotechnical work required to provide a developable site meeting cleanup levels applicable for residential properties, and such remediation and geotechnical work shall be at the sole cost of the City, its agents, assigns or licensees. Notwithstanding any budget estimate, the City shall complete the remediation and geotechnical work to the satisfaction of the North Carolina Department of Environmental Quality (NCDEQ), as evidenced by the issuance of a No Further Action Letter, issued by NCDEQ, which shall be provided to DEP upon issuance. To the extent permitted by law, City agrees to indemnify, defend and hold DEP harmless from and against any and all costs, liabilities and claims, arising from the negligent acts or omissions of the City its agents, contractors, assigns or licensees in exercising this right of environmental remediation. DEP reserves the right to perform quality assurance activities to confirm that activities are being completed in accordance with this Exhibit F and Plans/Specifications in Exhibit E referenced herein. DEP reserves the right to require corrective action if conditions do not meet the requirements set forth in the above."*

6. Section D. Responsibilities, of the Option Agreement is hereby amended by adding a new Paragraph 8. Construction Staging, which shall read as follows: *"The City, its agents, assigns or licensees may hereby utilize the area of the Property shown on Exhibit G, attached hereto and incorporated herein, for the purpose of construction staging, storage of materials, equipment, vehicles (including heavy equipment), construction trailers, and installation of perimeter fencing and security cameras. Such construction staging shall be at the sole cost of the City, its agents, assigns or licensees. To the extent permitted by law, City agrees to indemnify, defend and hold DEP harmless from and against any and all costs, liabilities and claims, arising from the negligent acts or omissions of the City its agents, contractors, assigns or licensees in exercising these construction staging activities. DEP agrees to this use subject to the condition that said use does not interfere with the future redevelopment potential of the Property and provided that:*
- a. The City its agents, assigns or licensees, shall not erect any permanent structures associated with this use, other than fencing which shall be removed at the end of construction period or earlier termination of this specific use.*
 - b. The term of this use of Property for this purpose shall begin upon execution of this agreement and shall extend for up to 24 months, unless otherwise agreed to by the parties.*
 - c. The City, its agents, assigns or licensees, agrees to utilize safety measures and controls in accordance with a Safety Plan, as shown in Exhibit H, attached hereto and incorporated herein.*
 - d. Upon termination of this construction staging use, all equipment and materials upon said Property shall remain the property of the City, its agents, assigns or Licensees and shall be removed by it within thirty (30) days, unless otherwise agreed to by the Parties and the Property shall be returned to its original condition. If equipment and materials are not removed within the agreed upon timeframe, or the Property is not returned to its original condition, DEP reserves the right to remove said equipment and materials and/or return the site area to its original condition at the sole cost of the City, its agents, assigns or Licensees."*
7. Section D. Responsibilities, of the Option Agreement is hereby amended by adding a new Paragraph 9, which shall read as follows: *"The terms and conditions of Section D, numbers 2-4 and 8 above shall be effective upon execution of this Option and are not contingent upon the City or any other entity exercising the Option. The responsibilities in Section D, numbers 5-7 above shall be effective upon exercise of this Option."*
8. Section F. Conditions of Closing, Paragraph 2. of the Option Agreement is hereby amended to extend time of closing period after notice of City's intent to exercise the Option from 60 days to 120 days.
9. Except as modified and amended herein, all of the terms, covenants and conditions of the Option Agreement shall remain the same and in full force and effect.

10. The Option Agreement and this Amendment contain all agreements, promises or understandings between City and DEP and no verbal or oral agreements, promises or understandings shall be binding upon either the City and DEP in any dispute, controversy or proceeding at law, and any addition, variation or modification to the Option and this Amendment shall be void and ineffective unless made in writing and signed by the Parties. In the event any provision of the Option and this Amendment is found to be invalid or unenforceable, such a finding shall not affect the validity and enforceability of the remaining provisions of the Option and this Amendment.
11. The Amendment shall become effective upon execution.

(SIGNATURES TO FOLLOW)

IN WITNESS WHEREOF, City and DEP have executed this Amendment as of the date referenced above.

Attest:

Magdalen Burleson
Maggie Burleson, City Clerk
(Official Seal)

CITY OF ASHEVILLE

By: Debra Campbell
Debra Campbell, City Manager

Date: 7/10/19

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

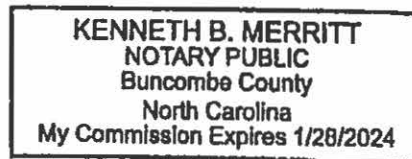
I, Kenneth B. Merritt, Notary Public of the County and State aforesaid certify that Magdalen Burleson, personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

WITNESS my hand and notarial seal this 18 day of July, 2019.

Kenneth B. Merritt
Notary Public

My Commission Expires:

1-28-2024



DUKE ENERGY PROGRESS, LLC

By: Rodney E. GaddyName: Rodney E. GaddyTitle: SVP Administrative ServicesDate: 7/18/19STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Nancy J. Holmer, Notary Public of the County and State aforesaid certify that Rodney E. Gaddy personally appeared before me this day, and acknowledged that he/she is the SVP-Admin Svcs of Duke Energy Progress, LLC and that by authority duly given and as the act of the company the foregoing instrument was signed in his/her name.

WITNESS my hand and notarial seal this 18th day of July, 2019.Nancy J. Holmer
Notary Public

My Commission Expires:

9-18-19

**Integra Realty Resources
Charlotte**

Appraisal of Real Property

**5.48 Acres of Land
319 Biltmore Avenue
Asheville, Buncombe County, North Carolina 28801**

**Prepared For:
Duke Energy Carolinas Land Services**

**Effective Date of the Appraisal:
January 9, 2014**

**Report Format:
Appraisal Report – Standard Format**

**IRR - Charlotte
File Number: 105-2014-0155**



Exhibit B



5.48 Acres of Land
319 Biltmore Avenue
Asheville, North Carolina

Integra Realty Resources
Charlotte

214 W. Tremont Avenue
Suite 200
Charlotte, NC 28203

T 704.376 0295
F 704.342.3704
www.irr.com



January 30, 2014

Mr. Kristofer L. Vogel
Duke Energy Carolinas Land Services
400 South Tyron Street
Charlotte, North Carolina 28202

SUBJECT: Market Value Appraisal
 5.48 Acres of Land
 319 Biltmore Avenue
 Asheville, Buncombe County, North Carolina 28801
 IRR - Charlotte File No. 105-2014-0155

Dear Mr. Vogel:

Integra Realty Resources – Charlotte is pleased to submit the accompanying appraisal of the referenced property. The purpose of the appraisal is to develop an opinion of the market value as is of the fee simple interest in the property. The client for the assignment is Duke Energy Carolinas Land Services, and the intended use is for property acquisition purposes.

The appraisal is intended to conform with the Uniform Standards of Professional Appraisal Practice (USPAP), the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and applicable state appraisal regulations. The appraisal is also prepared in accordance with the appraisal regulations issued in connection with the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).

To report the assignment results, we use the Appraisal Report option of Standards Rule 2-2(a) of the 2014-2015 edition of USPAP. As USPAP gives appraisers the flexibility to vary the level of information in an Appraisal Report depending on the intended use and intended users of the appraisal, we adhere to the Integra Realty Resources internal standards for an Appraisal Report – Standard Format. This type of report has a moderate level of detail. It summarizes the information analyzed, the appraisal methods employed, and the reasoning that supports the analyses, opinions, and conclusions. It meets or exceeds the former Summary Appraisal Report requirements that were contained in the 2012-2013 edition of USPAP.

Mr. Kristofer L. Vogel
 Duke Energy Carolinas Land Services
 January 30, 2014
 Page 2

The subject consists of two adjoining parcels of land containing an area of 5.48 acres or 238,709 square feet. The site is improved with a 49,357 square foot, vacant, automotive dealership building. The improvements were originally constructed in 1960 and are in fair to average condition. Based on our inspection of the improvements, discussions with local brokers, and our concluded land, it is our opinion that the improvements no longer contribute value and are considered an underutilization of the site. However, they serve as an adequate interim use until such time that commercial redevelopment is warranted.

Based on the valuation analysis in the accompanying report, and subject to the definitions, assumptions, and limiting conditions expressed in the report, our opinion of value is as follows:

Value Conclusion			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
Market Value As Is	Fee Simple	January 9, 2014	\$5,250,000

Extraordinary Assumptions and Hypothetical Conditions

The value conclusion is subject to the following extraordinary assumptions that may affect the assignment results. An extraordinary assumption is uncertain information accepted as fact. If the assumption is found to be false as of the effective date of the appraisal, we reserve the right to modify our value conclusion.

1. Although requested, a current boundary survey was not provided. While we assume the land areas indicated on the tax records are correct, we reserve the right to amend this should subsequent information be provided that is contrary to what is stated herein.

The value conclusion is based on the following hypothetical conditions that may affect the assignment results. A hypothetical condition is a condition contrary to known fact on the effective date of the appraisal but is supposed for the purpose of analysis.

1. None

If you have any questions or comments, please contact the undersigned. Thank you for the opportunity to be of service.

Respectfully submitted,

INTEGRA REALTY RESOURCES - CHARLOTTE

Emi Paolantonio 
 Ellie Paolantonio
 Certified General Real Estate Appraiser
 North Carolina Certificate # A7214
 Email: epaolantonio@irr.com

John D. Scott, Jr. 
 John D. Scott, Jr., MAI, MRICS
 Certified General Real Estate Appraiser
 North Carolina Certificate # A4175
 Email: jscott@irr.com

